

Significant Legislative Rule Analysis

WAC 246-840-125, WAC 246-840-201 through 207.

A Rule Concerning Continuing Competency

August 2015

Describe the proposed rule, including a brief history of the issue, and explain why the proposed rule is needed.

The Washington State Nursing Care Quality Assurance Commission (NCQAC) proposes amendments to Chapter 246-840 WAC. The proposed rules make several changes including:

- Removing the self-assessment requirement from NCQAC's continuing competency process;
 - Changing how and when the NCQAC will conduct audits;
 - Providing a hearing process if nurses fail to meet continuing competency requirements;
 - Revising the process to change license status from expired or inactive to active;
 - Adding the requirement that nurses must take suicide prevention training and these course hours will meet continuing education requirements; but that Certified Registered Nurse Anesthetists (CRNA) are exempt from this requirement; and
- Reorganizing and making general housekeeping improvements to achieve greater clarity and make compliance simpler for the nursing community.

History

The NCQAC first implemented a continuing competency program in 2011. Since that time, NCQAC has learned lessons while implementing the program and hearing from the nursing community about the need to make some changes to the program. The NCQAC convened a commission workgroup to work on rule content based on these proposals. In addition the Washington state legislature recently passed legislation requiring changes to the continuing competency rules (see discussion on Senate Bill (SB) 5092 (Chapter 229, Laws of 2013), Engrossed Substitute House Bill (ESHB) 2315 (Chapter 71, Laws of 2014), and Engrossed Substitute House Bill (ESHB) 1424 (Chapter 29, Laws of 2015) amending RCW 43.70.442).

Is a Significant Analysis required for this rule?

Yes, a significant legislative rule analysis is required for this rule. Portions of the proposed rule would adopt substantive provisions of law pursuant to delegated legislative authority, the violation of which subjects a violator of such rule to a penalty or sanction. However, the department has determined that no significant analysis is required for the following portions of the rule.

Table: Non-Significant Rule Identification

#	WAC Section	Section Title	Reason
1	WAC-246-840-210	Continuing Competency Definitions	Does not meet criteria of a legislatively significant rule.

Clearly state in detail the general goals and specific objectives of the statute that the rule implements.

There are several statutory provisions that relate to the rulemaking. Excerpts from these statutes are listed below:

RCW 18.79.010 Purpose.

It is the purpose of the nursing care quality assurance commission to regulate the competency and quality of professional health care providers under its jurisdiction by establishing, monitoring, and enforcing qualifications for licensing, consistent standards of practice, continuing competency mechanisms, and discipline. Rules, policies, and procedures developed by the commission must promote the delivery of quality health care to the residents of the state of Washington.

RCW 18.79.110 Commission — Duties and powers — Rules — Successor to boards.

... (3) The commission shall adopt rules on continuing competency. The rules must include exemptions from the continuing competency requirements for registered nurses seeking advanced nursing degrees. ...

(4) The commission shall adopt such rules under chapter 34.05 RCW as are necessary to fulfill the purposes of this chapter:

In order to carry out the commission's duty to establish continuing competency mechanisms, changes are necessary to streamline processes, resolve confusion of licensees, and clarify both the audit process and the hearing rights to which licensees are entitled.

In addition, the proposed rules carry out the requirements of Engrossed Substitute House Bill (ESHB) 2315 (Chapter 71, Laws of 2014) and Engrossed Substitute House Bill (ESHB) 1424 (Chapter 29, Laws of 2015) by establishing required suicide assessment training as a part of the commission's continuing competency mechanisms. Washington State Legislature passed bills that require the NCQAC to complete rulemaking. Specifically, Senate Bill (SB) 5092 (Chapter 229, Laws of 2013) amended RCW 18.79.110 to direct the NCQAC to adopt rules for continuing competency and include exemptions for nurses seeking advanced nursing degrees for the purpose of ensuring the competency and quality of practicing nurses in Washington State.

Engrossed Substitute House Bill (ESHB) 2315 (Chapter 71, Laws of 2014) and Engrossed Substitute House Bill (ESHB) 1424 (Chapter 29, Laws of 2015) amend RCW 43.70.442 to require healthcare professionals to include suicide prevention training in their continuing competency requirements with the goal to reduce the number of suicides in Washington State. The proposed rules implement this requirement establishing suicide prevention training requirements for nurses, while exempting Certified Registered Nurse Anesthetists (CRNA) as directed by ESHB 1424.

Explain how the department determined that the rule is needed to achieve these general goals and specific objectives. Analyze alternatives to rulemaking and the consequences of not adopting the rule.

The proposed rules achieve the authorizing statute's goals and objectives by clarifying how continuing competency requirements will be enforced and establishing requirements for suicide prevention training. The NCQAC made the determination that all nurses will be required to complete six hours of suicide prevention training. However, nurses enrolled in advanced nursing programs (beyond pre-licensure) and registered nurses who hold an active CRNA license are exempt from the suicide prevention training requirement.

Rulemaking provides additional notice and opportunity for input to license holders and applicants by sending the audit notice three months prior to renewal. Rules are required by the legislation, so no alternatives to rule making were considered.

Updating the continuing competency rules will ensure safe nursing practice by improving and clarifying the audit process to achieve better compliance by simplifying the rules, increasing readability, removing non-enforceable requirements, improving consistency throughout the rules, and providing due process for those failing to meet the continuing competency requirements.

The proposed rules, collectively, enable the NCQAC to promote the delivery of quality health care to the residents of the state of Washington by ensuring nurses practicing in Washington state have the skills and competency to safely provide care.

Explain how the department determined that the probable benefits of the rule are greater than the probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented.

WAC 246-840-125 Retired active credential

Description of the proposed rule: This section establishes the process for a registered or licensed practical nurse to place their credential in a "retired active status." The proposed changes include removing references to the NCQAC audit process, which is addressed in other sections within this chapter.

Cost/Benefit Analysis: There is no compliance cost associated with the proposed rule because it does not create any new requirements. The benefit of the rule is that it removed unneeded references to the audit process, which is addressed in other sections, and it will make the rule easier to read and understand.

New WAC 246-840-200 Continuing Competency Purpose Statement

Note: the requirements in WAC 346-840-201 have been moved to this new section WAC 246-840-200.

Description of the proposed rule: This section identifies the purpose of the continuing competency requirements.

Based on feedback from the nursing community as well as input from NCQAC staff, the proposed changes remove the self-assessment and reflection requirement from the continued competency program requirements because it was not effective in achieving its purpose nor was it enforceable.

Cost/Benefit Analysis: There is no cost associated with the proposed rule change because it does not add any new requirements. The benefit of the rule is that nurses will no longer have to complete the self-assessment and reflection process and fill out required forms. The NCQAC's assumption is that the public will not be affected by this rule change.

New WAC 246-840-220 Continuing competency requirements – active status

Note: the requirements in WAC 346-840-203 have been moved to this new section WAC 246-840-220.

Description of the proposed rule: Changes include removing specific examples of nursing jobs and continuing education from rule as it caused confusion to the nurse if a specific job title or method of continuing education was not listed. Changes also add a suicide prevention training requirement and exemption for CRNAs consistent with amendments to RCW 43.70.442. Under the proposed rule for suicide prevention, training will be six hours. The commission determined the roll of the nurse as patient advocate requires the full six hours for all nurse licensees. The proposed rule also removes the self-assessment and reflection requirement as it was confusing and unenforceable. Lastly, the proposed rule exempts nurses from continuing competency requirements when enrolled in advanced nursing education programs per the statutory mandate.

Cost/Benefit Analysis: The law and proposed rule allow suicide prevention training to count toward the existing continuing education requirement, therefore the proposed rule does not increase the cost to the nurse for continuing education.

The benefit of the rule is that with the addition of suicide prevention training, nurses will be better educated and prepared to assess, treat, and manage patients, thus better protecting the public. Deletion of examples throughout the continuing competency rule will lessen confusion about specific requirements.

New WAC 246-840- 250 Continuing Competency –Reactivation from expired status

Note: the requirements in WAC 346-840-204 have been moved to this new section WAC 246-840-250.

Under the current rule, nurses with expired licenses are treated differently upon application for reactivation depending on the length of time the license was expired. Nurses with an expired license for less than three years would need to sign an agreement to complete 177 hours of active nursing practice and 15 hours of continuing nursing education (177/15 agreement, which is one third of the three year requirement) within the first year following reactivation and subject to a mandatory audit. Nurses whose licenses were expired for more than three years and working in another United States' jurisdiction could sign an attestation of completing 531 hours of active nursing practice and 45 hours of continuing nursing education. Additionally, nurses who signed the 177/15 agreement and failed to meet the continuing competency requirements were denied renewal and required to complete a NCQAC approved refresher course.

Under the proposed rule, any nurse reactivating their license who has completed 531 hours of active nursing practice and 45 hours of continuing nursing education can provide evidence of these hours and not be subject to the 177/15 agreement and mandatory audit. Additionally, nurses who fail to meet the continuing competency requirement following reactivation will be referred for disciplinary action.

Costs: The current rule denies license renewal for nurses who did not complete continuing competency requirements and does not allow a nurse to continue practicing until a commission approved refresher program costing thousands of dollars is completed. The proposed rule clarifies that a nurse who fails to meet the 531/45 requirement and then in addition fails to meet the 177/15 agreement will be referred to the disciplinary process, which creates the potential for inactivation or other restriction of the license. A small increase in discipline cost will be incurred by the commission.

Benefits: By removing the requirement of completing a NCQAC approved refresher program, it will save a nurse thousands of dollars and one year of no employment. Removing the denial of renewal and referring the nurse to discipline allows the nurse due process and the ability to request a hearing. This will ensure the public is protected and the license is either made inactive or a specific monitoring plan to regain competence is established. The potential of disciplinary action is expected to incentivize the nurse to complete the continuing competency requirements within the appropriate continuing competency time requirements.

Analysis: Because nurses will benefit from this new rule by avoiding the cost of the refresher course, by being able to have their license renewed and continue working while they complete their continuing competency one-year agreement, and by being given due process, and because benefits will accrue to the public by ensuring nurses will be up to date and competent to safely practice helping ensure patient safety, the benefits will outweigh the cost to the nurse from non-compliance.

New WAC 246-840- 260 Continuing Competency –Reactivation from inactive status

Note: the requirements in WAC 346-840-205 have been moved to this new section WAC 246-840-250.

Under the current rule, nurses with inactive licenses are treated differently upon application for reactivation depending on the length of time the license was inactive. Nurses with an inactive license for less than three years would need to sign an agreement to complete 177 hours of active nursing practice and 15 hours of continuing nursing education (177/15 agreement, which is one third of the three year requirement) within the first year following reactivation and subject to a mandatory audit. Nurses whose licenses were inactive for more than three years and working in another United States' jurisdiction could sign an attestation of completing 531 hours of active nursing practice and 45 hours of continuing nursing education. Additionally, nurses who signed the 177/15 agreement and failed to meet the continuing competency requirements were denied renewal and required to complete a NCQAC approved refresher course.

Under the proposed rule any nurse reactivating their license who have completed 531 hours of active nursing practice and 45 hours of continuing nursing education can provide evidence of these hours and not be subject to the 177/15 agreement and mandatory audit. Additionally, nurses who fail to meet the continuing competency requirement following reactivation will be referred for disciplinary action.

Costs: The current rule denies license renewal for nurses who did not complete continuing competency requirements and does not allow a nurse to continue practicing until a commission approved refresher program costing thousands of dollars is completed. The proposed rule clarifies that a nurse who fails to meet the 531/45 requirement, and then in addition fails to meet the 177/15 agreement will be referred to the disciplinary process which creates the potential for inactivation or other restriction of the license. A small increase in discipline cost will be incurred by the commission.

Benefits: By removing the requirement of completing a NCQAC approved refresher program, it will save a nurse thousands of dollars and one year of no employment. Removing the denial of renewal and referring the nurse to discipline allows the nurse due process and the ability to request a hearing. This will ensure the public is protected and the license is either made inactive or a specific monitoring plan to regain competence is established. The potential of disciplinary action is expected to incentivize the nurse to complete the continuing competency requirements within the appropriate continuing competency time requirements.

Analysis: Because nurses will benefit from this new rule by avoiding the cost of the refresher course, by being able to have their license renewed and continue working while they complete their continuing competency one-year agreement, and by being given due process, and because benefits will accrue to the public by ensuring nurses will be up to date and competent to safely practice helping ensure patient safety, the benefits will outweigh the cost to the nurse from non-compliance.

New WAC 246-840-230 Continuing competency audit process and compliance

Note: the requirements in WAC 346-840-206 have been moved to this new section WAC 246-840-230.

Description of the proposed rule: The amended rule deletes a statement that the NCQAC would audit “up to five percent of registered nurses and practical nurses that were renewing their licenses at the end of a three year audit cycle” and replaces this language with a more broad statement that the NCQAC will audit nurses “through random selection.” Amendments also allow the NCQAC to audit nurses for continuing competency requirements when they are in the disciplinary process or if they have not successfully completed their continuing competency requirements as spelled out in WAC 246-840-205 (now renumbered to WAC 246-840-260). The amended section also removes the three-letter notification process in WAC 246-840-205(now 260) as nurses will be notified prior to renewal rather than through a series of letters issued after renewal. The new rule allows nurses in active practice who do not meet the continuing competency requirements after three years to be granted an extension for up to one year to complete deficiencies, or sign a 177/15 agreement resulting in a mandatory audit if no hours were accrued. Audit request letters will be sent to the nurse 90 days prior to renewal with the renewal notice to the address on record with the department. Under the current rule, up to three audit request letters were sent after license renewal.

Cost/Benefit Analysis: There is no cost associated with this section because it does not add any new requirements. The benefits are substantial. Removing the percentage of those being randomly audited allows the NCQAC the option of auditing a greater number of nurses to ensure compliance with continuing competency requirements and better ensuring nurses will be up to date and competent to safely practice helping ensure patient safety. In addition, the NCQAC can now audit nurses who are in the disciplinary process if suspected of not completing the continuing competency requirements to better protect the public.

In allowing an extension for nurses not completing all continuing competency requirements the nurse can continue to work rather than being placed on inactive status or having to sign a 177/15 agreement. Sending audit notices prior to renewal gives a nurse advanced notice and ample time to gather audit documents, replacing the multiple notifications in current rule.

WAC 246-840-207 Failure to meet continuing competency requirements (Repealed)

Note: Results in failure to meet continuing competency requirements is spelled out in other sections as identified throughout this analysis.

WAC 246-840-240 Extension. (New section)

Description of the proposed rule: This rule outlines an extension allowing nurses in active practice to make up the deficient continuing competency hours not completed within the three year continuing competency cycle. Failing to do so will result in referral to disciplinary action.

Cost/Benefit Analysis: There are no costs associated with this proposed rule because it does not add any new requirements.

The benefit of the proposed rule is that it will allow nurses to get an extension to complete all of their continuing competency requirements. During this extension period, nurses can continue to work rather than being placed on inactive status or having to sign a 177/15 agreement. The nurse will only have to make up the deficient hours instead of the 177 hours of active nursing practice and 15 hours of continuing nursing education.

Cost/Benefit Summary

The NCQAC is proposing making several changes to the existing continued competency. The changes will enable the NCQAC to more effectively implement the continued competency programs. In many cases, the changes will result in fewer costs (cost savings or “benefit”) to the nursing community. For these reasons, the total probable benefits of the rule exceed the total probable costs.

Identify alternative versions of the rule that were considered, and explain how the department determined that the rule being adopted is the least burdensome alternative for those required to comply with it that will achieve the general goals and specific objectives state previously.

The initially-proposed version of the amended rules on continuing competency requirements were not clear on due process for nurses not complying with the requirements. The current version gives a nurse an extension to complete deficient continuing competency requirements and in the event he or she does not complete the deficiency within the allotted time, they are given due process.

Determine the rule does not require those to whom it applies to take an action that violates requirements of another federal or state law.

The rule does not violate federal or state law.

Determine that the rule does not impose more stringent performance requirements on private entities than on public entities unless required to do so by federal or state law.

The rule does not impose more stringent performance requirements on private entities.

Determine if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and, if so, determine that the difference is justified by an explicit state statute or by substantial evidence that the difference is necessary.

The rule does not differ from any federal regulation or statute applicable to the same activity or subject matter.

Demonstrate that the rule has been coordinated, to the maximum extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter.

This rule is specific to the competency requirements for nurses, which is a state function delegated to the NCQAC.